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November 29, 2018

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Petitioners in Pro Per

Ashlee Coronado, Clerk of the City of Bisbee  
1415 Melody Lane, Building G  
Bisbee, Arizona 85603

Re: Protest of Award of Contract to Jacobs for operational services at the City of Bisbee  
Wastewater Treatment Plant

Dear Ashlee Coronado:

Pursuant to City Code Article 3.5.20, the undersigned, Donna Pulling and Jeffery Harris, as residents and property owners in the City of Bisbee, hereby protest the Award of Contract to Jacobs for operational services at the City of Bisbee Wastewater Treatment Plant that was approved at the Special Session of Mayor and Council held on November 20, 2018 for the reason that the aforementioned contract award does not comply with applicable law and regulations.<sup>1</sup> The grounds for the instant protest are set out with greater specificity in the following memorandum of points and authorities.

### **Memorandum of Points and Authorities**

I. The City of Bisbee failed to demonstrate that funds for the first fiscal year of the instant five-year award contract (hereinafter referred to as "Award Contract") were available at the time of contracting as is required for multi-year contracts by Bisbee City Code Article 3.5.13(A) and A.R.S. § 34-607(A).

II. The multi-year Award Contract fails to include a provision consistent with the requirement under Bisbee City Code Article 3.5.13(A) and A.R.S. § 34-607(A) that "[p]ayment and performance obligations for succeeding fiscal years shall be subject to the availability of funds." (Quoting Bisbee City Code Article 3.5.13(A))

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<sup>1</sup> In and for the City of Bisbee, contract awards for professional services are governed, in principal part, by Bisbee City Code Article 3.5 (Procurement) and Arizona Revised Statutes Title 34. See Bisbee City Code Article 3.5.8(A) ("Professional services from a technical registrant, including but not limited to an architect, engineer, geologist or surveyor, shall be procured in a manner that is consistent with applicable state law. Such services may be procured in any manner allowed by such laws (See A.R.S. § 34-103)").

III. Prior to the utilization of the multi-year Award Contract, the City of Bisbee failed to meaningfully determine the following as is required for multi-year contracts by Bisbee City Code Article 3.5.13(B) and A.R.S. § 34-607(B):

1. That estimated requirements cover the period of the contract and are reasonably firm and continuing; **and**
2. That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.

(Quoting Bisbee City Code Article 3.5.13(B)) (Emphasis added.)

IV. The multi-year Award Contract fails to provide for cancellation due to unavailability of funds in succeeding years in a manner consistent with the requirements of Bisbee City Code Article 3.5.13(C) and A.R.S. § 34-607(C). Specifically, the Award Contract is devoid of a provision that would permit the City of Bisbee to cancel the Award Contract in any subsequent year (of the multi-year contract) in which “funds are not made available to support continuation of performance” as long as “the contractor shall [only]<sup>2</sup> be reimbursed for the reasonable value of any non-reoccurring costs incurred but not amortized in the price of the supplies and services delivered under the contract.” (Quoting Bisbee City Code Article 3.5.13(C))

V. Professional services from a technical registrant were not procured in a manner that is consistent with applicable state law as is required by Bisbee City Code Article 3.5.8(A). Specifically, the City of Bisbee, as agent, failed to ensure that the selection committee members were competent to serve on the selection committee as is required by Arizona Revised Statute § 34-603(C)(3).<sup>3</sup> Flying in the face of the requirement in § 34-603(C)(3) that “[t]he agent shall ensure that the selection committee members are competent to serve on the selection committee”, the three-member selection committee designated by the agent did not include a single engineer, (much less a registered engineer specializing in wastewater treatment,) or a licensed wastewater treatment plant operator.

### **Relief Requested**

For the foregoing reasons, the undersigned respectfully request that the Contract Award to Jacobs for operational services at the City of Bisbee Wastewater Treatment Plant, approved November 20, 2018, be voided.

DATED: November 29, 2018

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Donna Pulling

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Jeffery Harris

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<sup>2</sup> Although the word “only” is omitted from Bisbee City Code Article 3.5.13(C), it is included in the governing Arizona statute, i.e., in A.R.S. § 34-607(C).

<sup>3</sup> A.R.S. § 34-603 governs procurement of professional services for non-emergency contracts exceeding five hundred thousand dollars. See A.R.S. §§ 34-603(A), 34-103(A)(1), and 34-606.